



MARCH 2012

IN THIS ISSUE:

Page

1 BULLYING IN SCHOOLS**3 MARCH UPPAC CASES****3 2012 LEGISLATIVE
SUMMARY****4 YOUR QUESTIONS****4 RECENT CASE**

Click on the following links to learn more:

UPPAC



Utah School Law Update is a publication of the Utah State Office of Education

Law and Legislation
250 East 500 South
P.O. Box 144200
Salt Lake City, UT 84114-4200

Larry K. Shumway, Ed.D., State
Superintendent of Public Instruction

Phone: 801.538.7830

Fax: 801.538.7729

william.speigel@schools.utah.gov

BULLYING IN SCHOOLS

At least three students are dead in Chardon, Ohio, this month, after yet another high school shooting rampage. Reporters say the shooter was a quiet boy who was often bullied and teased by his classmates. The shooting itself was an act of extreme bullying. A local news host spent seven hours the night of the shooting discussing the incident and taking calls from listeners weighing in on the role that bullying, among other things, played in the tragedy.

Bullying is on the rise and with the increasing use of technology in our culture and in our schools kids are discovering new ways to bully each other. Whether it's on campus or online, Legislatures across the country recognize that something needs to be done to curb the cruelty; many have imposed bullying laws that are intended to do just that. Or, rather, the laws are intended to require the schools to do just that.

Utah's legislature passed a new bullying law in 2011 that amended the previous law to specifically include harassment and cyberbullying as prohibited activities. The law also requires each school district and each school to have in place a bullying policy by September, 2012. The policy must include the following components: definitions of and language prohibiting bullying, cyberbullying, harassment, and hazing; prohibition on retaliation against an individual who reports bullying, and prohibitions on making a false report of bullying. The law also requires training of school employees, volunteers, and students involved in extracurricular activities regarding bullying and retaliation.

USOE's Model Bullying Policy

USOE is in the process of developing a re-

vised Model Bullying Policy that LEAs and schools can adopt and modify to fit their needs. In the meantime, the following are tips for best practices in handling bullying, and cyberbullying in particular.

1. Policy. Make sure your LEA has a clear policy in place that is visibly posted, discussed, and understood by students and parents that prohibits bullying, cyberbullying, harassment, hazing, and retaliation in all forms. Lay out the consequences for engaging in the above behavior in black and white. Leave no room for questions with regard to what will happen to students if they violate this policy.

2. Pay Attention. Do not dismiss bullying as boys will be boys, girls will be girls, it's just a phase, or kids shouldn't be so sensitive. The old adage of "sticks and stones may break my bones but names will never hurt me," has proven again and again to be untrue. More and more students have taken their own lives as a direct result of bullying. A new term has even been created to describe the phenomenon: *bullycide*.

3. Prevention. Preventive measures are always going to be the most effective way to combat bullying. Assemblies on the effects of cyberbullying and the potential laws violated can help set a tone of cyber-tolerance, kindness and civility. In addition to educating students on the harmful effects of cyberbullying, give them tools to deal with a situation that arises when they are the targets. One anti-cyberbullying organization suggests: Stop, Block, and Tell. Have them stop what they're doing instead of automatically hitting reply, block the message and the sender, and tell a trusted adult. Another organization suggest teaching students to be an "up stander" rather than a bystander, citing a statis-

(Continued on page 2)

tic that 50% of bullying stops within 10 seconds when a bystander stands up to bullying.

4. Contract. Create an acceptable use policy that reserves the right to discipline students for actions taken off-campus if they are intended to have an effect on a student or if they adversely affect the safety and well-being of a student while in school. This will prevent lawsuits in which schools are sued for exceeding their authority and violating a student's free speech rights. According to StopCyberbullying.org, it now becomes a contractual issue, not a constitutional issue.

5. Reporting Methods. Develop a procedure by which students can report bullying. Studies show that students are less likely to come forward with information about bullying (either as a victim or as a witness) if they have to identify themselves. So consider anonymous reporting procedures in your school. Many schools set up "bullying tip-boxes" in the office where students can leave notes anonymously about bullying situations. While this may be sufficient for some schools, consider a bullying tip box in each classroom so students don't have to make an out-of-the way trek to the office that may not never happen if too inconvenient. Also, consider text tip-lines which are programs used in many schools that allow students to text a tip to an investigator and prompt an immediate investigation. With students' smart phones being an additional appendage to their bodies these days, texting is the most common method of communicating among young people and is most likely to be used if to report a bullying incident.

6. Investigate. When an LEA gets a tip, it should not be ignored. Your school should have an assigned investigator (or two) whose responsibility it is to conduct investigations of bullying reports. Those investigations should include a conversation with the alleged perpetrator, a con-

versation with the alleged victim, and conversations with any and all witnesses. Keep your interviews confidential and discreet, and keep in mind that even if the allegation is one of off-campus "free speech", there is nothing in the Constitution that prohibits an investigation into the allegation. Also, determine if there is any documentation; with cyberbullying, there probably will be: a website (Facebook, Myspace, personal blog, etc.) text messages, YouTube videos, or tweets. If necessary, search the alleged perpetrator's cell phone (keeping your search limited to the scope of the allegation) for texts and tweets, and review online and search websites. Remember to talk to parents of the alleged perpetrator and of the alleged victim, letting both parents know of the allegation and the school is doing to handle it.

7. Document. With every investigation, be sure to document all tips, all interviews, and all phone calls. It would be wise to develop a standard form that can be used for interviews in which the school records information such as name of complainant, dates of complaint, names of alleged perpetrator(s), place of incident, description of what happened, name(s) of witness(es), and any other relevant information. Also, if there is any documentation, for example, a website that can be printed or a text message that can be photographed and printed out, maintain the documents with the file.

8. Take action. While zero tolerance policies are not always the most effective (often discouraging students from reporting anything for fear of retaliation), consistent, inevitable, and escalating consequences are key. If the behavior happens on school grounds, suspension or expulsion may be appropriate. If the behavior happens in cyberworld, consider whether the behavior "materially and substantially disrupts the school environment" (see the Recent Case article on p. 4 for more details about what factors courts look at to determine whether off-campus speech may be found to materially and substantially disrupt the school environment under the Tinker standard). If there is disruption, suspension and possibly expulsion, again, may be appropriate. However consider what a student suspended for inappropriate speech on the internet might do if he is required to stay home,

with his computer, all day. It would be nice if he sat in his room and pondered the weight of his actions. In reality, he will step up his bullying a notch, and figure out a way to keep it off campus.

Be creative with student discipline. If the perpetrator is involved in extracurricular activi-



ties, suspend the student from participation in the activity. Utah law specifically states that participation in extracurricular activities for students is NOT a constitutional right and even if there are not enough grounds to suspend a student from school, suspension from extracurricular activities is wholly within the discretion of the school.

Another creative disciplinary technique is to require the perpetrator to write an essay or watch a video on the effects of bullying. There are many resources online with powerful and tragic stories of bullying situations. The student may be required to meet with the school counselor and discuss bullying in a one-on-one session. Helping the perpetrator understand the impact of his actions on others—to build empathy—is more effective than dishing out discipline just to be punitive. Bullying often stems from a lack of social skills or impulse control; help her build these skills.

Note that conflict resolution or peer mediation are NOT effective ways to resolve bullying problems. These types of problem solving, while appropriate in some disciplinary circumstances, suggest that the victim is partly to blame for the perpetrator's actions.

9. Follow-up. Once the school has been notified of a specific bullying incident, you've in-

MARCH UPPAC CASES

UPPAC and the State Board of Education had a busy month!

The Utah State Board of Education revoked the license of Shane Micah for involvement in an international child pornography network trade.

Julie Burton's license was suspended for taking items out of her classroom

Michael Wakefield's license was suspended for engaging in inappropriate and off-color comments to students and staff that were sexually offensive.

Mark Luce's license was suspended for grabbing a disruptive student and dragging him over another student's desk, and kicking the student in the rear.

Frank Koon's license was suspended for viewing pornography with school equipment.

Nathan Gary's license was suspended for giving students access to a school computer without supervision.

Preston Oberg's license was suspended for viewing sexually-oriented material using school equipment.

(Continued from page 2)

investigated, documented, and taken action, follow up on the incident by visiting with the victim periodically to ensure that she has suffered no retaliation or continued bullying. Follow up with the perpetrator by checking in on him to ensure she is complying with the bullying policy. Follow up with parents of both victim and perpetrator to let them know you haven't forgotten about the incident. These can all be brief and informal conversations but it will help create an atmosphere of persistent vigilance against all bullying activity.

10. Keep at it! While it's no easy trick for school staff to juggle a million responsibilities today, creating an anti-bullying school is an important ball to keep in the air. Review the school/district policy with faculty often, encourages classroom discussions where tolerance, kindness, and civility are taught, reward "up standers", and continue to enforce firm rules and exact clear consequences when the rules are broken.

Resources for Educators and Parents

The following website is a helpful story for guiding parents of cyber-victims. Entitled "[Goldilocks and the CyberParents](#)," it is a light and humorous 21st century rendition of Goldilocks and the Three Bears, in which Mama Bear and Paper Bear help Goldilocks' parents understand how to best help Goldilocks, who has been a victim of cyberbullying.

The website [cruu.org](#) was created by Nancy Willard, director of the Center for Safe and Responsible Internet Use. Her guidance for school leaders is a helpful supplement to the above tips.

Also, a new film entitled "Bully", directed by Lee Hirsch, is scheduled to be released March 30, and appears to be a powerful documentary and educational film for both students and educators. The film is currently rated "R" but the rating is being challenged so schools can show the film to students and use it as a basis for discussion and change. The [website](#) is the homepage for the film and the underlying project.

3

2012 LEGISLATIVE SUMMARY

I wish I could say that the delay in writing this summary was in expectation of a veto or vetoes by the Governor. But the timing makes for more accurate (and interesting!) information. A comprehensive summary of all 2012 bills that passed and affected public education will be posted soon on the Utah State Office of Education homepage. This summary will highlight only a few interesting bills.

Let's start with the most interesting: **HB 363 Health Education Amendments**. This bill passed in both the House and the Senate by comfortable margins. The bill directs the State Board of Education to develop a health education curriculum that is "abstinence only." Local boards and charter schools may choose to teach health education; if they choose to teach health education, it must be abstinence only. A parent and educator committee is directed to determine the health ed. curriculum for a specific school or district. The bill also forbids "teaching about" contraception (and other sex ed. related areas) not just "advocating for" those subjects, as the old law provided. "Human sexuality instruction" is broadly defined in the bill causing educators to ask if it would prohibit some of the topics covered in AP biology or science courses, CTE courses and concurrent enrollment courses. Governor Herbert vetoed the bill on Friday, March 16, stating, "I am unwilling to conclude that the State knows better than Utah's parents as to what is best for their children."

(Continued on page 4)

To Get a weekly roundup from
our blog, [UtahPublicEducation.org](#), click here:



YOUR QUESTIONS

(Continued from page 3)

Q: There has been extensive news coverage of coaches and licensed school employees who are accused of misusing school funds or using school money despite school policies to the contrary. Are there some rules or standards that are so important and so obvious that professional educators are expected to know about them and follow them? -Parent



A: Yes. The State Board of Education has passed Professional Educator Standards (R277-515). Also, an Ethics Review is required for all new licensees and all renewing licensees, based on professional standards. Utah educators are expected to know about and follow the standards even without further emphasis by their employers or with contradictory messages from their supervisors. The Public Officers' and Employees' act applies to teachers and forces public employees from using official position or influence for personal benefit.

Q: Does Utah have a law that protects "whistleblowers" (government employees who anonymously report waste of government resources or violation of state and federal laws by the public agencies that employ them)? -Teacher

A: Yes, "whistleblowers" are protected under Utah Code Section 67-21-1 through 9. "An employer may not take adverse action against an employee because the employee . . . communicates in good faith the existence of any waste of public funds . . . or a violation or suspected violation of a law, rule, or regulation adopted under the law of this state . . . or any recognized entity of the United States." There is a \$500 civil penalty for violation of the law. Public employers have an affirmative obligation to inform employees of this protection.

SB 64 Public Education Employment Reform, sponsored by freshman Senator Alan Osmond, makes significant changes to teachers' expectations of tenure and employment policies. Senator Osmond's approach to this sensitive subject was praised for months. He succeeded in bringing together diverse groups to support annual evaluations for school district employees and increased public information about the relationship between student performance and teacher advancement and salaries. The bill gives great deference to the State Board of Education to develop minimum standards for local district policies and encourages professional development and mentoring, as well as more expeditious termination, for less-than-adequate educators. The bill also provides an important focus on administrators. An unfortunate omission: charter schools are not required to provide the same safe guards and evaluations for their employees, nor will their employees be required to meet the same minimum standards as traditional schools. There is no required connection between charter school teacher salaries and student performance.

HB 128 and HB 213 Community Council [Changes], sponsored by Representative Bill Wright and Rep. Lee Parry, respectively, made changes (yet again!) to the Community Council member election process and organization. Notably, Community Councils will no longer follow the Open and Public Meetings Act, but now have their own prescriptive public meeting standards. Also, teachers can serve on community councils at the schools where their own children attend if the parent members of those councils outnumber teachers by two.

SB 178 Statewide Online Amendments, sponsored by Senator Stephenson, preserved the Electronic High School (a great plus!), changed timelines for students registering for online courses, allows school districts and school district consortia to offer online courses (without extra payments to providers), and allows students to register for online courses before consulting school counselors. Time will tell whether these changes will increase the number of students taking online courses from public providers other than their own high schools. Testing data on students' ability to master subjects through online providers should be available soon. The enrollment process does not allow school counselors to "counsel" as much as they could and remains cumbersome.

SB 175 School Grading, sponsored by Senator Neiderhouser, delayed the school grading program for one school year.

Funding conclusions: The State WPU (public school funding unit) was increased by one about percent—which will largely be used to cover school district increases in retirement and social security. Probably no teacher raises this year.

RECENT CASE

Cyberbullying has not been the subject of many court cases... yet. Most cases that have made it to the courts have involved students using the internet to write or post disparaging remarks about their teachers or administrators. In 2009, however, a federal district court in California reviewed a case involving student-on-student cyberbullying. In J.C. v. Beverly Hills Unified Schools Dist., a student challenged her suspension from school for posting a 4 minute 35 second YouTube video of her friends talking in a derogatory way about a classmate. The girls making the video called the classmate a "slut", saying she was "spoiled," and "talk[ed] about boners." They used profanity during the recording. One girl said that the classmate was "the ugliest piece of *&! I've ever seen in my whole life." The plaintiff is heard encouraging her friends to continue with the rant.

(Continued on page 5)

(Continued on page 5)

(Continued from page 4)

Q: I have read recently about teachers “being drunk at school.” Does the legal standard setting a legal standard for “driving under the influence” (.083 on a breathalyzer) apply to teachers in the classroom? –Concerned Parent

A: The standard for “drunk while supervising students” is not a drop. While supervising students, educators cannot be impaired at all by alcohol.

Q: Can I use a T.A., who is a couple of years older than my students, to help me grade student homework? -Charter School Educator

A: Yes, Teaching assistants can be very helpful. In addition to instructing, assisting, and supervising students, teacher assistants may grade tests and papers, check homework, keep health and attendance records, do typing and filing, and duplicate materials. They may also stock supplies, operate audiovisual equipment, and keep classroom equipment in order. Classroom teachers are responsible for training teaching assistants. They should be instructed, specifically in appropriate confidentiality of student information and student records.

(Continued from page 4)

The plaintiff was suspended from school, she and her father sued for violating her First Amendment rights. Using *Tinker v. De Moines* as the framework for discussion, the court ruled in favor of the plaintiff, stating there was *insufficient* evidence to show a substantial disruption had occurred in school.

Some of the factors the court considered in coming to this conclusion:

- The speech was not violent and there was no history of violence from the students who posted the video.
- It took the school counselor only 25 minutes to calm the victim down and convince her to go to class.
- Other students who were pulled out of class left class quietly when asked and without incident.
- There was no confrontation at school about the video.
- The entire incident was resolved before lunch that day.
- There was no effect on classroom activities.
- There was no widespread whispering campaign that was sparked by the video.
- Not a single student watched the video while at school.
- There was no evidence that discussion of the video occurred during class or that it otherwise disrupted school work.
- The administrators who dealt with the incident were not doing anything highly out of the ordinary course of daily tasks: they disciplined students, counseled the victim, and dealt with upset parents.
- Administrators were not late to or didn’t miss any school activities.
- No evidence of prior a relationship between the victim and the student involved supported a prediction that a verbal or physical confrontation was likely.
- No evidence of victim’s social history.
- No evidence that speech similar to the YouTube video had resulted in violence or near violence at school in the past.



While the California court is not authoritative in Utah, it provides some ideas for schools when making a disciplinary decision about cyberbullying.

WHAT IS UPPAC?

UPPAC is a committee of nine educators and two community members charged with maintain and promoting a high standard of professional conduct and ethics among Utah teachers. It is advisory to the Utah State Board of Education in making recommendations regarding educator licensing and may take appropriate disciplinary action regarding educator misconduct.

The Government and Legislative Relations Section at the Utah State Office provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the State Office.

